BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2019-2-E

IN RE: Annual Review of Base Rates for Fuel Costs for South Carolina Electric & Gas Company	))))))	**SOUTH CAROLINA SOLAR BUSINESS ALLIANCE, INC.'S REPLY TO COMPANY'S RESPONSE TO MOTION TO BIFURCATE PROCEEDING**

INTRODUCTION

In its Response in Opposition to the South Carolina Solar Business Alliance Inc.'s ("SBA's") Motion to Bifurcate Proceeding ("Opposition"), South Carolina Electric& Gas Company ("SCE&G") accuses the SBA of filing its Motion to Bifurcate these proceedings in bad faith. SCE&G argues that SBA "is not concerned with the efficient conduct of these proceedings or the promotion of judicial economy" and "is only interested in unnecessarily delaying the Commission's consideration of needed updated to PR-2," so QFs can "avoid their legal commitments" and "get additional financial compensation beyond that to which they are entitled." The company also paints a dire picture of the consequences for ratepayers if the Commission were to delay consideration of its PR-2 updates by a single moment, arguing that "updates to Rate PR-2 that are needed today" to ensure that ratepayers are not stuck paying "excessive" costs for QF energy. SCE&G, finally, appears to argue that the Commission must consider the proposed update in the fuel docket and not in a separate proceeding.

SCE&G's arguments are unsupported by the facts or the law and SBA's Reply follows.

I. SBA's motion is not in bad faith and is not intended to delay these proceedings unnecessarily.

SCE&G argues that the purpose of SBA's motion is to delay and disrupt these proceedings so QFs can continue to contract at the "excessively high" PR-2 rates currently in effect. As evidence of this, SCE&G argues that SBA "failed to timely exercise its rights as a party of record" in the fuel proceeding, because it "delayed in sending any discovery to SCE&G" until approximately March 12, 2019, approximately three months after SBA intervened in this docket.[1] <u>SCE&G glosses over the fact that it did not provide direct prefiled testimony until February 8, 2019 (approximately two months after SBA intervened),</u> and did not itself propound discovery until February 22. In any event, notwithstanding SBA's grave concerns about the VIC request, the primary impetus for SBA's motion was the S.C. House's passage of H.3659, which did not occur until February 28, 2019.

As discussed in its Motion, SBA submits that this legislative development (along with the other developments referenced in the Motion) creates substantial uncertainty and raises the strong possibility that the Commission, if it approved SCE&G's proposed rate revisions, would simply have to come back in six months and do it all over again.

Contrary to SCE&G's claims, this is not mere "speculation" – H.3659 was passed unanimously by the House and is proceeding through Committee in the Senate. Passage of the bill, if it occurs, will happen <u>no later</u> than the end of the legislative session, which will occur the second Thursday in May. Unless the Governor were to veto the legislation, it would go into law within five business days after passage by the legislature.

II. The Commission may consider avoided cost rates in the fuel case or in another proceeding.

SCE&G suggests that the Commission is *required* by S.C. Code Ann. § 58-27-865 and by its orders in Docket No. 2018-2-E to consider revisions to its avoided cost rates in this proceeding. That is simply false. As discussed in SBA's motion, S.C. Code Ann. § 58-27-865 does provide that avoided costs are part of "fuel costs related to purchased power," and that the company must petition the commission for recovery of those costs from ratepayers in the fuel proceeding. But it does not provide that avoided cost rates paid to QFs <u>must</u> be calculated in the fuel case. And indeed, the Commission does not review the avoided cost calculations of Duke Energy Carolinas ("DEC") or Duke Energy Progress ("DEP") in those companies' fuel dockets. DEC and DEP's avoided cost rates and standard offer rate schedules are reviewed and approved by the Commission in Docket No. 1995-1192-E, captioned *"Proceeding for Approval of the*

[1] SCE&G claims that SBA "became a party of record to this proceeding over four months ago." Opp. at 10. The Commission granted SBA's motion to intervene on December 19, 2018. SCE&G should have checked its math before making such a claim: December 19, 2018, was approximately <u>three</u>, not four, months ago.

Public Utility Regulatory Policies Act of 1978 (PURPA) Avoided Cost Rates for Electric Companies". Although this docket was established prior to the passage of Act 236, the Commission has continued to review and approve Duke's avoided cost rates in that docket since passage of the Act. See Order No. 2016-349 (May 12, 2016).[2] The Commission has conducted multiple fuel cases for Duke since Act 236 was passed, and has authorized recovery of fuel costs related to purchased power, without feeling compelled by statute to consider any changes to Duke's avoided cost rates. See, e.g., Docket No. 2018-3-E, Order No. 2018-652 (Sept. 28, 2018); Docket No. 2017-3-E, Order No. 2017-597 (Oct. 17, 2017); Docket No. 2016-3-E, Order No. 2016-687 (Sept. 30, 2016).

Nor does the Commission's denial of SBA's Motion to Bifurcate in the prior fuel docket counsel the same decision here. As previously discussed, the instant Motion is based not on concerns about the abbreviated time frames for consideration of avoided cost issues in this docket, but primarily on the substantial uncertainty created by the pendency of H.3659 and other developments discussed in SBA's Motion. In that respect the SBA's motion is more akin to SCE&G's December 22, 2017 request that the Commission waive its obligation (imposed in Order No. 2016-297) to update the PR-2 rate twice a year. *Request for Waiver of Commission Order No. 2017-246*, Docket No. 2017-2-E (Dec. 22, 2017) ("PR-2 Update Waiver"). At the time SCE&G filed that motion, the PR-2 tariff was required to be updated twice a year (SCE&G had insisted in the prior fuel case that such frequent updates were necessary). In the spring 2017 fuel case SCE&G had dramatically reduced avoided capacity payments for QFs, claiming that its capacity needs in upcoming years would be almost completely satisfied by the VC Summer nuclear project. But SCE&G went on to announce that it would abandon VC Summer in August 2017, leaving the utility with large unfilled capacity needs and undoubtedly driving the <u>true</u> avoided cost of QF capacity up significantly. But rather than provide updated rates in fall 2017, as it was obligated to do under Commission Orders No. 2016-297 and 2017-246, SCE&G declined to file <u>any</u> update, and instead filed (in late December 2017) a request that the Commission waive its obligation to update its rates until the following May.

[2] In January 2019, the Commission established a procedural schedule for the consideration of Duke's revised avoided cost rates (which are directly analogous to the proposed PR-2 rates) in that docket. Order No. 2019-6-H (Jan. 3, 2019).

The basis for that motion was "uncertainty in [SCE&G's] resource plan, occasioned by the abandonment of VC Summer, the announcement of its intent to purchase the Columbia Energy Center, and the addition of solar facilities on its system." As intervenors pointed out in opposition to the waiver, those developments would have driven the actual avoided cost of capacity up significantly, and granting the waiver would result in grossly inaccurate PR-2 rates being held over. The Commission granted SCE&G's waiver request, however, without expressing any concern about the possibility that it would result in stale and inaccurate rates. Order No. 2018-55 (Jan. 24, 2018). (When SCE&G ultimately did file the next rate update, it found a way to avoid addressing the capacity gap left by VC Summer by simply concluding that solar QFs have no capacity value whatsoever.)

It is hypocritical in the extreme for SCE&G to now insist that "PR-2 rates updates … are needed today to ensure… that the amounts SCE&G are paying for solar QF energy are not excessive" (Opp. at 8) (emph. in original), given their utter lack of concern about the extension of inaccurately low avoided cost rates in the past. And it would be inconsistent with past Order for the Commission not to defer consideration of the current rate update, given the significant uncertainty around avoided cost rates now.

Even if current PR-2 rates were "excessively high" (as SCE&G exclaims no fewer than ten times in its Opposition), there appears to be little danger that this would result in ratepayers being stuck with excess costs as a result of the PR-2 tariff remaining in effect for an additional six months or more. At this time SBA is unaware of any QFs that have contracted under the current PR-2 rates, and SCE&G has likely not filed any PPAs under the current rates with the Commission.[3]

[3] The practical implications of SCE&G's request to suspend the PR-2 rate should be made clear. Even if the rate schedule is suspended, QFs would retain the right under PURPA to obtain contracts to sell their output at rates equal to avoided cost as calculated at the time a legally enforceable obligation was incurred. 18 C.F.R. § 292.304(d). So SCE&G would be obligated to recalculate its avoided costs, using Commission-approved methodologies, whenever a QF requested PPA pricing. Because SCE&G's cost calculation methodology is a "black box" computer model (i.e. PROSYM), SBA has substantial concerns as to whether such rates would be compliant with PURPA and prior orders of the Commission. If the Commission were to suspend the PR-2 tariff, it should clarify that the Company must calculate any negotiated avoided cost rates using exactly the same methodology and assumptions approved in the prior PR-2 proceedings. The only inputs that should change are natural gas forecasts, which should be derived from the same sources used in prior proceedings.

III. It is not appropriate to consider the VIC in this docket.

Nor does SCE&G give any coherent reason why the Commission should not delay consideration of the proposed VIC until a later date. Unlike SCE&G's avoided cost calculation methodologies, which have previously been approved by the Commission and do not appear (based on prefiled testimony) to have changed materially since the last rate update, the VIC is a concept that is wholly new to the Commission and ORS, and which has never before been implemented by any utility in the region. It is a highly technical concept which relies not only on long-term projections about system operations, but also on policy judgments about how the alleged costs of solar integration should be allocated among QFs.[4] The integration study called for by H.3659 is intended to create information that will allow the Commission to come up with informed answers to these questions that are consistent with the long-term interests of ratepayers (not just Dominion shareholders) and with the public good.

Even if there were some potential harm to ratepayers in "holding over" the current avoided cost rates, there is no potential for harm to ratepayers in delaying the VIC. As SCE&G points out, most projects currently under contract, and <u>all projects contracting under the current PR-2 rates</u>, have PPA provisions allowing integration charges to be assessed on approval by the Commission. So even if the Commission delays consideration of the VIC until some point in the future, SCE&G will be able recover integration costs from those projects if the Commission deems it appropriate.

In light of this fact, SCE&G's accusation that QFs are trying to "avoid their legal commitments" and shift the burden of integration costs onto ratepayers rings hollow. What SBA <u>is</u> seeking is to prevent a premature decision on the proposed VIC, on the compressed time frame of the fuel proceeding and without the benefit of additional information that may be generated by the H. 3659 integration study. Because if the law is passed and the results of that study tend to show that the $4/MWh VIC proposed by SCE&G is inaccurate or improper, there is a substantial

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[4] These policy questions include, but are not limited, to the following: To what extent should a project representing the first few megawatts of solar on SCE&G's system should bear the costs caused by projects that represent the 1000th megawatt of solar on the system? How should the integration costs associated with older projects that did not agree in their PPAs to pay integration costs (which amounts to roughly 300 MW of projects) be allocated? Are there system *benefits* associated with integration that should partially offset the increased costs? Should the VIC be "trued up" over time if integration costs turn out to be higher or lower than expected?

likelihood that any QFs forced to pay those charges in the interim would have to go back to the Commission to seek disgorgement of those excessive payments from SCE&G.

SCE&G's argument that the VIC is a component of its avoided cost calculations fundamentally misunderstands PURPA. As SBA acknowledged in its Motion, integration costs could, in theory, be incorporated in avoided cost calculations. But the concept of a *variable* integration cost is inimical to PURPA, which provides that a QF is entitled to sell its output at rates equal to "the avoided costs calculated at the time the obligation [to sell] is incurred." 18 C.F.R. § 292.304(d)(2). In other words, if integration costs are part of avoided cost, they must be calculated and fixed at the time the QF establishes the right to sell under PURPA (which in this context is generally when it enters into a PPA with SCE&G). That is not what SCE&G is proposing here.

Here, SCE&G asks the Commission to allow it to retroactively assess the additional charges on already-operating projects that are, under federal law, entitled to be paid for their output at avoided rates calculated when they first contracted to sell to SCE&G. Even if they agreed to such charges under their PPAs, this is still <u>not</u> "avoided cost."[5] Even with respect to new projects, the proposed VIC is presented by SCE&G as a standalone charge, unconnected to its methodologies for calculating either avoided energy or avoided capacity costs. In short, the proposed VIC is far outside the scope of the current fuel docket, and the Commission should not consider it in this context.

Respectfully Submitted,
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[5] It also bears noting that those charges are based on integration costs (allegedly) caused by solar QFs that came, or will come, onto SCE&G's system well after those earlier projects went into operation.